

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 66 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

RAMESHBHAI KALIDAS JADAV

Appearance:

MR MA BUKHARI APP for Appellant
MR KB ANANDJIWALA for Respondents

CORAM : MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA
Date of decision: 17/03/99

ORAL JUDGEMENT (Per A.M. Kapadia, J.):

1. Rameshbhai Kalidas Jadav and Kantibhai Mathurbhai, respondent Nos.1 and 2 before us (arrayed as A-1 and A-2 respectively in the Trial Court and hereinafter so referred to) alongwith other three accused were put up of trial before Special Judge, Ahmedabad City to answer charges under Section 7, 13 (1) (d) (i) (ii)

and 13 (2) of the Prevention of Corruption Act ('the Act' for short). The charge was that both A-1 and A-2 herein, alongwith three others who are not before us, were armed and unarmed police constables of Odhav Police Station, Ahmedabad at the relevant time and therefore they were public servants and in their said capacity, demanded illegal gratification (bribe) in sum of Rs.2500/- from the complainant Ganesh Nathuji Chaudhari on 18.6.1990 and pursuant to the struck down dealing, accepted Rs.500/- on the same day and accepted Rs.1,000/- on 20.6.1990 from the complainant with a view to favour him by not lodging complaint and not searching his house in connection with prohibition case. Therefore both A-1 and A-2 alongwith three other accused stood their trial before the learned Special Judge. The trial ended in acquittal of both A-1 and A-2 as well as two others as one died during the trial, case against him was abated and aggrieved thereby State of Gujarat has filed the appeal against A-1 and A-2 herein while no appeal is filed against rest of the two acquitted accused.

2. Briefly stated, prosecution case is as under:

2.1. One Ganesh Nathuji Chaudhari, serving as a driver had consumed alcohol on 18.6.1990 because of vow of his son. At about 4 P.M. he had gone to answer call of nature. While returning from there police personnel came in a jeep from Odhav village and on seeing him, four police constables alighted from the jeep. Out of them, one constable caught hold of his collar and inquired whether he has consumed alcohol. At their insistence he brought all of them to his house and they insisted to search his house in connection with prohibition case. Thereafter he requested not to search his house as there are some guests in his house on account of vow of his son. Thereafter four constables demanded Rs.5,000/- for not lodging complaint and for not searching his house in connection with prohibition case. After that on persuasion of his acquaintance - Babu Nepali, Rs.2,500/- was fixed. However, they demanded immediate cash of the said amount. Again on persuasion and intervention of Babu Nepali they agreed to accept Rs.500/- immediately which was also given by borrowing from Babu Nepali and for rest of the amount of Rs.2,000/- time was sought for and he has given name of Kamlaben who stood as surety and thereafter all the policemen went to the house of Kamlaben. Kamlaben also agreed to stand as their surety and, therefore, it was decided and agreed to accept the said amount between 8 P.M. and 9 P.M. on the same day. The complainant explained them that he would not be able to manage Rs.2,000/- at a time and,

therefore, requested to pay in two instalments. Thereafter it was again agreed by the police constables to accept Rs.1,000/- on the same day and remaining amount after one week.

2.2. The complainant was not prepared to pay the said amount of Rs.1,000/- to four police constables and, therefore, he decided to lodge complaint with Anti Corruption Bureau. He managed Rs.700/- by pledging some ornaments and Rs.300/- from his savings. He lodged the aforesaid complaint at ACB Ahmedabad City before the Police Inspector - Virsinhbhai Kalubhai Ambaliyar and his signature was also obtained beneath the same. Thereafter the Police Inspector arranged for two persons who could act as panchas. On their arrival he introduced both of them to the complainant and informed them about the complaint. The complainant presented Rs.1,000/- which was to be supplied as bribe money and the said currency notes were smeared with anthracene powder and usual experiments on the currency notes were performed in presence of the complainant and the panchas and usual instructions were also passed on to all of them and the first part of the panchnama was prepared.

2.3. As per agreed time all the police personnel in company of the complainant and the panchas went to the place where it was agreed to accept the amount of bribe. It may be noted that the concerned policemen did not turn up as per time fixed and, therefore, raid could not be laid and raid was wound up.

2.4. On 20.6.1990, again the complainant approached Police Inspector, ACB, Ahmedabad and informed that accused No.3 Dilavarkhan, who died during the pendency of the trial, came to him and asked him to pay the amount as per their dealings and, therefore, he informed him to collect the money at Kamlaben's house who stood as surety.

2.5. Therefore, again on 20.6.1990 trap was arranged and first part of the panchnama was prepared de-novo. But Rajeshbhai Vinodbhai Parikh who was to act as panch No.1 did not turn up, one Krishnajivan Tribhovandas Shah was selected as panch No.1 and in his presence also usual experiments with anthracene powder on the currency notes were performed and instructions were passed on to him and to the complainant again. Thereafter they started from the office of ACB to the house of Kamlaben, alongwith the complainant, panchas and the members of the raiding party and on reaching Kamlaben's house they took up their respective position as no one could identify them.

Thereafter accused Nos.1 and 2 came there and demanded the amount of bribe from the complainant and accepted the same and thereafter on receiving the same in presence of panch No.1 and on receiving signal, all the members of the raiding party encircled both the constables and introduced them as members of ACB Office and with the help of panch No.1 currency notes worth Rs.1,000/- which were smeared with anthracene powder were taken out and recovered and thereafter second part of the panchnama was prepared.

2.6. After completing second part of panchnama, statement of Kamlaben was recorded. After returning to ACB office offence was registered against five accused and report was made to the Director of ACB. Statement of two panchas were also recorded. Statements of other witnesses and members of raiding party were also recorded.

2.7. So far as respondents are concerned, there is no dispute that they were public servants at the relevant time and, therefore, necessary sanction for prosecuting them was obtained. They were produced alongwith the charge-sheet before the learned Special Judge, Ahmedabad City.

2.8. Charge was framed by the learned Special Judge which was explained to them and they pleaded not guilty and claimed to be tried and, therefore, the trial commenced against all of them.

2.9. It may be appreciated that the complainant Ganesh Chaudhari though summoned by learned Special Judge remained absent and his presence could not be procured. In these circumstances, his evidence could not be recorded. However, in order to bring home the charge levelled against all the accused, prosecution has relied upon oral testimony of following three witnesses:

(1) Panch No.1, P.W.1, Rajeshbhai Vinodbhai Parikh, Ex.13.

(2) Panch No.2, P.W.2, Krishnajivan Tribhovandas Shah, Ex.15.

(3) Investigating Officer, Virsinhbhai Kalubhai Ambaliyar, Ex.19.

Prosecution also placed reliance on the documentary evidence to connect the accused with the alleged offence.

2.10. At the end of the trial, statements of all the accused were recorded under section 313 of the Criminal Procedure Code ('Code' for short) to enable them to explain circumstances arising against them were recorded.

All of them pleaded not guilty to the offence of demanding and accepting illegal gratification and they reiterated that they are falsely implicated and false case has been filed against all of them. They have not examined any defence witness. However, they have produced certain documents at Ex.28 to 36 reference of the same would be made as and when required. In their further statement it was stated that the complainant who was sitting at the house of Kamlaben has asked about deceased Dilavarkhan to whom complainant wanted to pay money. They stated that deceased accused Dilavarkhan was on leave. Therefore, the complainant forcibly thrust the currency notes to accused No.1 who refused to accept the same and, therefore, it fell down on earth which was taken by complainant and again forcibly thrust to A-2. Meanwhile the raiding party came. Therefore, it is their case that they never demanded nor accepted the currency notes.

3. Learned A. P. P. Mr. Bukhari while taking us through the evidence of panch witnesses contended that from the evidence of panch Krishnajivan Tribhovandas Shah, who is witness of demand, acceptance and recovery of bribe money and in his presence bribe was demanded, accepted and recovered from A-1 and A-2 is proved beyond doubt. The said fact is corroborated by the evidence of Investigating Officer in whose presence the amount was recovered. Therefore prosecution has successfully established the case against both the accused. According to him, it is true that the complainant is not examined. Therefore, the complaint which was given by him is not exhibited. But that fact itself is not sufficient to discard or throw overboard the prosecution case. In view of the aforesaid facts, he submitted that there is clinching evidence on record with respect to demand, acceptance and recovery of illegal gratification of Rs.1,000/- by the accused and, therefore, case against both the accused is proved beyond doubt and, therefore, both the accused should be held guilty.

4. In counter submission, learned advocate Mr. Anandjiwala contended that in the absence of evidence of complainant and oral evidence in that regard, prosecution cannot prove its case at all. In the instant case, the complainant has not entered into witness box to prove the complaint and, therefore, the complaint is rightly not accepted by the trial Court. So far as the evidence of panch witness Krishnajivan Shah is concerned, it is proved beyond doubt that he is a selectee. He has also attended one previous trap arranged by ACB office and there is no consistent version so far as the amount of

bribe is concerned. Therefore, evidence of panch witnesses do not inspire any confidence to connect the accused with the offence of illegal demand of gratification from the complainant. So far as Investigating Officer is concerned, he is a witness only of recovery of the amount. Mere recovery without any proof with regard to demand and acceptance, cannot take prosecution case any further. In view of the aforesaid state of affairs the prosecution has miserably failed to prove the charge levelled against the accused and, therefore, the accused cannot be held guilty and the learned trial Judge has very rightly appreciated the evidence and recorded the finding of acquittal against all the accused.

5. The case against the accused is that they demanded bribe of Rs.2,500/- from the complainant and accepted Rs.500/- from him on the same day and agreed to accept Rs.2,000/- in two instalments, out of the said amount, Rs.1,000/- was to be paid on 19.6.1990 but as the accused did not turn up, the trap was failed and it was wound up. Therefore, again on 20.6.1990 trap was arranged. According to the prosecution, the accused were not legally entitled in their capacity as public servants in discharge of their duties to demand illegal gratification. Ingredients of charge under section 7 and 13 (2) of the Prevention of Corruption Act, 1988 ('the Act' for short) may be briefly narrated as under:

- (i) That the accused were public servants;
- (ii) That they must be shown to have obtained from any person any gratification;
- (iii) That the gratification should be other than legal remuneration as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show in exercise of his official function favour or disfavour to the person.

When the first two ingredients are proved by the evidence, a rebuttable presumption arises in respect of the third ingredient and in absence of proof of first two ingredients, the presumption does not arise. On mere recovery of certain amount from a person or accused, without proof of payment on behalf of such person to whom official favour was to be shown the presumption cannot arise (vide *Sitaram v. State of Rajasthan*, AIR 1975 SC 1432).

It must also be remembered that Section 161 of the Indian Penal Code (Section 7 of the Act) does not require that the public servant must in fact be in a position to

do the official act, favour or service at the time of the demand or receipt of the gratification. To constitute an offence under this section, it is enough if the public servant who accepts the gratification, takes the same by inducing a belief or by holding out that he would render assistance to the giver 'with any other public servant' and the giver gives the gratification under the belief. It is further immaterial if the public servant receiving the gratification does not intend to do the official act, favour or forbearance which he holds himself out as a capable of doing (vide Chaturdas Bhagwandas Patel v. State of Gujarat, AIR 1976 SC 1497).

Another important test which must be remembered is that where the recovery of money coupled with other circumstances leads to the conclusion that the accused received illegal gratification from some person, the Court would certainly be entitled to draw the presumption under Section 4 (1) of the Act. Even under Section 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, in their relation to the facts of the particular case (vide Hazarilal v. The State Delhi Administration, AIR 1990 SC 973).

Where in a trap case the Judge magnifies every minor detail or omission to falsely or throw even a shadow of doubt on the prosecution evidence, then it would be the very antithesis of a correct judicial approach to the evidence of witness in a trap case. Indeed, if such a harsh touchstone is prescribed to prove such a case, it will be difficult for the prosecution to establish any case at all (vide State of Maharashtra v. Harsingh Rao Gangaram Pimole, reported in AIR 1984 SC 63).

Thus, the Court of Special Judge or the Court of appeal hearing the appeal against the judgment and order of the Special Judge should invariably be aware of the correct judicial approach and see that it does not enter into an exercise of magnifying minor details and omissions only with a view to falsify witnesses and throw overboard the prosecution case.

Keeping these principles in forefront, we may now advert to the evidence on record to find out whether the prosecution has successfully established the case beyond reasonable doubt that in their capacity as public servants the accused demanded and accepted illegal gratification from the complainant with a view to favour the complainant by not lodging complaint and not

searching his house in connection with prohibition case.

6. Now, so far as the complainant Ganesh Chaudhari is concerned, as observed in the foregoing paragraphs, he has not entered into the witness box. Therefore complaint lodged by him could not be brought on record as it is not proved before the lower Court. The basic aspect of initial demand of Rs.5,000/- made by five police constables on 18.6.1990 is not proved. Likewise, neither the agreed amount of Rs.2500/- nor the amount of Rs.500/- paid on the same day is proved. So far as remaining amount of Rs.2000/- which were to be paid in two instalments is concerned, the prosecution has tried to prove with the help of panchas.

7. It may be appreciated that pursuant to the complaint, first part of the panchnama was prepared in presence of two panchas i.e., Rajeshbhai Vinodbhai Parikh and Mansukhbhai Veljibhai Patel. As per prosecution case, Rajeshbhai was to act as panch No.1 in the trap which was to be laid on 19.6.1990. But as the accused did not turn up the trap was wound up. The prosecution examined P.W.1, Rajeshbhai Vinodbhai Parikh at Ex.13. As the trap was wound up on 19.6.1990, the evidence of Rajeshbhai is of no avail or assistance to the prosecution case. However, one thing which could be noted from his evidence is that according to him the complainant Ganesh Chaudhari complained that accused demanded Rs.1000/- for not lodging the complaint and not searching his house in connection with prohibition case. He has further testified that the complaint was read over to him and as per the complaint demand of Rs.2500/- was mentioned and out of the same, a sum of Rs.1500/- was already paid and Rs.1000/- was to be paid.

8. As the trap on 19.6.1990 was wound up and on the subsequent day i.e., on 20.6.1990, an information was given by the complainant that deceased accused No.3 was to come on 20.6.1990 at the place of Kamlaben as he could not come on the previous day for accepting the bribe amount, again a trap was arranged and a denovo panchnama was prepared wherein Krishnajivan Tribhovandas Shah and Mansukhbhai Veljibhai Patel were selected as panchas. Krishnajivan was to act as panch No.1 whereas Mansukhbhai was to act as panch No.2. Mansukhbhai Veljibhai Patel was panch No.2 in the panchnamas of 19.6.1990 and 20.6.1990. Prosecution has examined panch No.1 Krishnajivan Tribhovandas Shah as P.W.2 at Ex.15. He has inter alia testified that the complainant has stated in his presence that accused demanded Rs.5000/- initially and thereafter on persuasion agreed to accept

Rs.2,500/Rs.500/- was already paid and amount of Rs.1000 was to be paid on 19.6.1990 and remaining amount of Rs.1,000/- was to be paid later on. As the tap was failed on 19.6.1990 again on 20.6.1990 trap was arranged. He further testified that on a scooter two persons came. Rider of the scooter asked the complainant as to whether the amount is brought. Complainant said that the amount is brought. Rider of the scooter demanded the money and complainant took out from the pocket of his pant and gave to police constable. The rider of the scooter has accepted currency notes and passed on to the pillion rider and thereafter on giving signal members of the raiding party gathered and amount was recovered from A-2. He has further testified that on seeing the currency notes in ULV, marks of anthracene powder could be seen and they were the same currency notes. This is the sum and substance of the evidence of this witness.

9. So far as the Investigating Officer, P.W.3, Virsinhbhai Ambaliyar is concerned, he is examined at Ex.19. He has inter alia testified the formalities done by him after recording the complaint till the trap is over. However, from his evidence defence has brought on record documents at Ex.28 to 36 showing several criminal complaints were recorded and registered against the complainant, Ganesh Nathuji Chaudhari.

10. Now, on over all appreciation of the oral evidence of panch witnesses and investigating officer, following facts would emerge:

(1) There is no consistent version with regard to the demand of bribe by the accused in the evidence of Panch No.1 Rajeshbhai Vinodbhai Parikh, P.W.1 and P.W.2 Krishnajivan Tribhovandas Shah.

(2) Complainant has not entered into witness box to corroborate the statement made by him in the complaint.

(3) As per the evidence of panch witnesses they were not knowing name of the accused police constables.

(4) No test identification parade was arranged to identify the accused.

(5) Panch Rajeshbhai and Krishnajivan were selected as panch No.1 and second Panch Mansukhbhai Patel are from the same office i.e., Regional Transport Office.

(6) Investigating Officer has not inquired about their independence.

(7) Krishnajivan has admitted in his evidence that in a previous trap which was laid by ACB, Ahmedabad he had acted as panch No.1. Therefore, it appears that the investigating officer is in the habit of selecting panchas of his own and of his choice and in these circumstances Panch No.1 has lost his independence.

(8) So far as investigating officer is concerned, he is merely a witness to recovery of the amount and not to the demand and acceptance of bribe and without any proof with regard to demand and acceptance only on the evidence of recovery of amount, case against accused cannot be established.

(9) So far as the complainant is concerned, he is not examined. However, documents Ex.28 to 36 are clinching to prove his involvement in various crimes as various offences were recorded and registered against him.

(10) It has also come in the evidence that the complainant is a drunkard as per evidence of Panch No.1 Krishnajivan and the bribe was demanded from the complainant for not lodging complaint against him in connection with prohibition case. Therefore, the complainant's past is shabby. There is no substratum to the prosecution case as the complaint lodged by the complainant is not exhibited.

(11) None of the panch witnesses examined by the prosecution can be said to be a witness of sterling quality as they are not independent persons.

11. Learned A.P.P. Mr. Bukhari has placed strong reliance on the judgment of the Honourable Supreme Court in the case of State of U.P. v. G.K. Ghosh, AIR 1984 SC 1453 wherein it was observed by the Honourable Supreme Court that in case of an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, the Court may feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the police officers even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the prosecution case. By relying upon the ratio laid down by the Honourable Supreme Court in the above decision, Mr. Bukhari has contended that in the instant case also though the complainant has not been examined, by relying

upon the evidence of panch witnesses whose evidence gets corroboration from the evidence of investigating officer, conviction can safely be based against the accused.

12. We respectfully disagree with the aforesaid submission of the learned A.P.P. Mr. Bukhari as the ratio laid down by the Honourable Supreme Court in the above decision is not applicable to the facts of the present case as in the instant case there is no evidence of the complainant and, therefore, the complaint given by him is not proved. Even in absence of his evidence from the evidence of the investigating officer defence could successfully prove the involvement of complainant in criminal activities. Therefore, his past is very shabby. Further in his complaint, names of the accused are not mentioned. Even their buckle numbers are not mentioned. No test identification parade was arranged to establish the identity of the accused by the panch witnesses. The panch witnesses for the first time after gap of four years could identify the accused and this fact creates doubt about their version.

13. One another infirmity which we could notice is that statement of two persons, that is, Babu Nepali at whose intervention and persuasion the amount of Rs.5000/was reduced to Rs.2500 and who has given Rs.500/from his own pocket to the complainant to give to the accused as bribe amount and one lady Kamlaben who stood surety on behalf of the complainant at whose house raid was to be carried out were recorded, but they have not been examined.

14. In view of the discussion made above and in the facts and circumstances of the case, it is abundantly clear that evidence adduced by prosecution is not reliable and trustworthy to base conviction against the accused. Therefore, we are of the opinion that the prosecution has utterly and miserably failed to prove case against the accused beyond doubt for the offence with which they stood their trial.

15. Moreover, this is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly, when the evidence has not inspired confidence of the learned trial Judge. As this Court is in general agreement with the view expressed by the learned trial Judge, it is not necessary for this Court either to

reiterate the evidence of the prosecution witnesses or to restate reasons given by the learned trial Judge for acquittal and in our view, expression of general agreement with the view taken by the learned trial Judge would be sufficient in the facts of the present case for not interfering with the judgment of the learned trial Judge and this is so, in view of the decisions rendered by the Hon'ble Supreme court in the case of Girija Nandini Devi and others v. Bijendra Narain Chaudhari, AIR 1967 SC 1124 and State of Karnataka v. Hema Reddy and another, AIR 1981 SC 1417. On overall appreciation of evidence, this court is satisfied that there is no infirmity in the reasons assigned by the learned trial Judge for acquitting the respondents/ original accused. Suffice it to say that the learned trial Judge has given cogent and convincing reasons for acquitting the respondents/ original accused and the learned A.P.P. has failed to dislodge the reasons given by the learned trial Judge and convince this Court to take a view contrary to the one taken by the learned trial Judge. Therefore, there is no merits in the acquittal appeal.

16. In the premises, the appeal being devoid of any merits embrace dismissal. Resultantly, the appeal is dismissed. Bail bonds shall stand cancelled. Sureties are discharged.

(karan)